

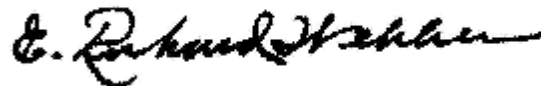
v. Dugan, 660 F.2d 379, 380 (8th Cir. 1981). If extraneous matters are presented, “the court may either treat the motion as one to dismiss and exclude the matters outside the pleadings, or treat the motion as one for summary judgment and provide the parties with notice and an opportunity to provide further materials.” *McDonnell Douglas Corp. v. Technology, Inc.*, 933 F.Supp. 822, 826 (E.D. Mo. 1996); *see also BJC Health Sys. v. Columbia Cas. Co.*, 348 F.3d 685, 687 (8th Cir. 2003); *Gibb v. Scott*, 958 F.2d 814, 816 (8th Cir. 1992).¹

Because it constitutes extraneous matter outside the pleadings, not properly considered on a motion to dismiss, the Court will strike Defendant’s Exhibit A, attached to Defendant’s Reply. Further, the Court will strike all statements in the Reply which rely on Exhibit A. These materials will not be considered by the Court in ruling on Defendant’s Motion to Dismiss.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to File Surreply in Opposition to Defendant’s Reply to Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss [doc. #11], which has been construed by the Court as Plaintiff’s Motion to Strike, is **GRANTED**.

Dated this 29th day of June, 2005.



E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

¹“It is true that the plaintiff must supply any documents upon which its complaint relies, and if the plaintiff does not provide such documents the defendant is free to do so.” *BJC Health Sys.*, 348 F.3d at 688. Here, however, Defendant has not merely provided a document upon which Plaintiff’s petition relies. Thus, the Court agrees with Plaintiff that the attachment at issue here does not fall within this exception and is therefore not permissible.